IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SMARTFLASH LLC and SMARTFLASH TECHNOLOGIES LIMITED, *Plaintiffs*, v. APPLE INC., ROBOT ENTERTAINMENT, INC., KINGSISLE ENTERTAINMENT, INC., and GAME CIRCUS LLC, *Defendants*.	Case No. 6:13-cv-447-JRG-KNM **JURY TRIAL DEMANDED**
SMARTFLASH LLC and SMARTFLASH TECHNOLOGIES LIMITED, *Plaintiffs*, v. SAMSUNG ELECTRONICS CO., LTD., ET AL., *Defendants*.	Case No. 6:13-cv-448-JRG-KNM **JURY TRIAL DEMANDED**

DEFENDANTS' OBJECTIONS TO THE MAGISTRATE'S JANUARY 26, 2015 MEMORANDUM OPINION AND ORDER ON CLAIM CONSTRUCTION

Pursuant to Fed. R. Civ. P. 72 and L.R. CV-72(c), Defendants[1] respectfully object[2] to, and request *de novo* review of, the Magistrate's January 26, 2015 Memorandum Opinion and Order ('447, Dkt. 432, '448 Dkt. 467) (the "Order").[3] For the reasons providing in their briefing ('447, Dkt. 360, '448, Dkt. 404) and for the following reasons, certain of the Magistrate's constructions are erroneous and Defendants request that their constructions be adopted.[4]

Defendants object to the finding that "the claims require 'use status data' and 'use rules' to be stored separately from content only where the claims explicitly recite such a requirement, such as by distinctly reciting different memories." (Order at 11.)

The Order properly recognized that the patentee "may be held to statements explaining how content data and use status data are separately stored when distinguishing over the prior art even if there were additional grounds for distinguishing the prior art." (Order at 9.) The Order erred by ignoring its own analysis and concluding that—for claims not explicitly reciting any distinct type of memory—no degree of separation is required between use status data and stored content. (Order at 10.) However, the Order's own analysis confirms that the prosecution history and Federal Circuit law does not support such a conclusion. Further, the Order is inconsistent with the Report and Recommendation Regarding Defendants' Motion for Summary Judgment of

[1] Samsung Electronics Company, Ltd., Samsung Electronics America, Inc., HTC Corporation, HTC America, Inc., Exedea Inc., and Apple Inc. ("Defendants")

[2] Pursuant to local rules, Defendants have briefly set forth their objections, but will provide additional briefing should the Court so desire.

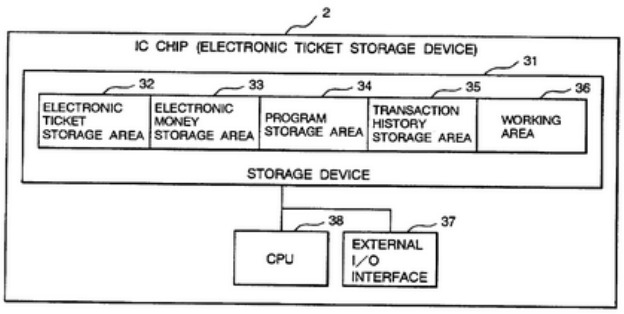
[3] Innova Patent Lic'g v. Alcatel-Lucent Hdgs., 2012 WL 2958231, at *1 (E.D. Tex. July 19, 2012) ("Because claim construction is a matter of law, this Court can review a magistrate judge's claim construction de novo.").

[4] The present filing is intended to address only the Court's most recent Order. For the avoidance of doubt, Defendants continue to maintain their prior objections to the Court's September 24, 2014 Claim Construction Order ('447, Dkts. 251, 298; '448, Dkts. 303, 345).

Invalidity Pursuant to 35 U.S.C. § 101 which found that the "asserted claims here recite specific ways of using distinct memories." ('447, Dkt. 423 at 19, '448, Dkt. 454 at 19.)

The prior art *Hiroya* reference teaches storing content and parameters in different, logically partitioned areas of the same memory:

FIG. 4



U.S. Patent No. 5,754,654, Hiroya, *et al.* (Fig. 4, showing a single "storage unit" (31) with five different, logically partitioned "storage areas" (32, 33, 34, 35, 36)). There is no dispute that the patentees, in distinguishing *Hiroya*, made two separate statements regarding separate storage of content. First, the patentee stated that "Hiroya does not disclose status data and use rules stored in a ***parameter memory***, wherein the use rules stored on the non-volatile memory are used to analyze the use status data stored on the non-volatile memory to determine whether access to ***separately-stored requested content*** is permitted as required in Applicants' claim 22 as amended." ('447, Dkt. 229 at 18; '448, Dkt. 274 at 18.) Notably, this statement, which applies both to ***use status data and use rules***, limits itself to instances where the claim recites "parameter memory." In that respect, the Order was correct in determining that claims reciting "parameter memory"—such as claim 31 of the '598 patent—appropriately fall within this construction. (Order at 9-10.)

In contrast, the patentees' second statement—arguing that "Hiroya does not disclose ***use status data stored separately from associated content data***"—does not limit itself to claims reciting "parameter memory." ('447, Dkt. 229 at 18, '448, Dkt. 274 at 18.) This statement by patentees was offered without reservation or limitation and should be understood as broader than the "parameter memory" statement. Nothing in the prosecution history or the Order suggests that this statement was offered with any caveat or reservation.

The Magistrate properly recognized in both of its claim construction orders that "the applicant relied on evaluating 'separate use data' according to use rules." (Order at 9 (citing '447, Dkt. 229 at 18, '448, Dkt. 274 at 18).) The Order also properly recognized that "'a[n] applicant's invocation of multiple grounds for distinguishing a prior art reference does not immunize each of them from being used to construe the claim language. Rather, as [the Federal Circuit has] made clear, an applicant's argument that a prior art reference is distinguishable on a particular ground can serve as a disclaimer of claim scope ***even if the applicant distinguishes the reference on other grounds as well***.'" (Order at 9 (citing *Andersen Corp. v. Fiber Composites, LLC*, 474 F.3d 1361, 1374 (Fed. Cir. 2007) (emphasis added).) Finally, the Order properly recognized that "clear disavowal is not required to simply inform claim construction." (*Id*. (citing *Shire Dev., LLC v. Watson Pharms., Inc.*, 746 F.3d 1326, 1332 (Fed. Cir. 2014).)

Given these undisputed facts and legal precedent, it was error to have concluded that the patentees' statement that "Hiroya does not disclose ***use status data stored separately from associated content data***" does not compel Defendants' proposed claim construction. There is no ambiguity in this statement. Patentees must be held accountable to their arguments before the patent office. *Andersen Corp*., 474 F.3d at 1374; *Computer Docking Station Corp. v. Dell, Inc.*, 519 F.3d 1366, 1377 (Fed. Cir. 2008). Accordingly, each instance of "use status data"

throughout the asserted claims—including claims 8, 10, and 11 of the '458 Patent and claim 32 of the '772 Patent[5]—should be construed as requiring separate storage of that use status data from associated content data.

For the foregoing reasons, Defendants object to the Order's erroneous claim construction regarding "use status data" in claims 8, 10 and 11 of the '458 Patent and claim 32 of the '772 Patent and respectfully request that this error be corrected and that each instance of "use status data" throughout the asserted claims—including claims 8, 10, and 11 of the '458 Patent and claim 32 of the '772 Patent—be construed as requiring separate storage of that "use status data" from associated content data.

[5] Claims 8 and 10 of the '458 patent are not asserted against Defendants in the 13-448 litigation.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on February 9, 2015. As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A).

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